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Letter dated 16 January 2006 from the Permanent Representative of India to the United Nations addressed to the Chairman of the Committee

With reference to your predecessor's letter dated 15 November 2005, I have the honour to transmit herewith the additional steps taken by the Government of India in implementation of Security Council resolution 1540 (2004) since the submission of our earlier report in October 2004 (see annex).

The Government of India will provide the additional information and clarifications sought by the 1540 Committee in due course.

(*Signed*) Nirupam **Sen**
Permanent Representative

06-21939 (E) 060206

Annex to the letter dated 16 January 2006 from the Permanent Representative of India to the United Nations addressed to the Chairman of the Committee

Inputs from the Government of India on the implementation of Security Council resolution 1540 (2004) on weapons of mass destruction and non-State actors

The Government of India has, since the submission of its report on implementation of the UNSC Resolution 1540 in October 2004 (S/AC.44/2004/(02)/62), taken additional steps to further strengthen its existing legislative and regulatory mechanism for exercising controls over weapons of mass destruction and their related materials with the view that these do not fall into the hands of non-state actors or unscrupulous elements. These are elaborated in the following paragraphs.

Weapons of Mass Destruction and Their Delivery Systems (Prohibition of Unlawful Activities) Act 2005 (WMD Act).

2. This Act was enacted in June 2005 and provides for an integrated and over-arching legislation on prohibiting unlawful activities in relation to weapons of mass destruction, their delivery systems and related materials, equipment and technologies. The Act criminalises a range of unlawful activities in relation to weapons of mass destruction and their means of delivery. The Act prohibits any person not duly authorised by the Central Government to deal with weapons of mass destruction and their means of delivery.

3. This Act supplements and complements the existing corpus of legislation (as listed in paragraph 3 of the report submitted earlier in October 2004).

Specifically the Act prohibits:

- Unlawful manufacture, acquisition, possession, development, transportation of a nuclear explosive device or a nuclear weapon and their means of delivery (Section 8(1)).
- Unlawful transfer (either directly or indirectly) to any one a nuclear weapon or other nuclear explosive device or transfer control over such a weapon (Section 8(2)).

- Unlawful manufacture, acquisition, possession, development, or transport of a chemical or biological weapon or their means of delivery. Unlawful transfer to anyone of a chemical or biological weapons (Sections 8(3) & (4)).
- Unlawful transfer to anyone missiles specially designed for the delivery of weapons of mass destruction. (Section 8(5)).

In the context of the above, the prohibition on transfer applies to a terrorist or non-State actors.

- The Act makes it a severe criminal offence to transfer weapons of mass destruction, missiles specially designed for their delivery, and WMD-usable materials, equipment and technologies; or to transfer fissile or radioactive material for use in terrorist acts. (Sections 8 & 9).
- The Act also prohibits transfer, acquisition, possession or transport of fissile or radioactive material for use in terrorist acts. (Section 10).
- The Act elaborates that its extent and application would include any person who commits an offence beyond India (Section 3).

4. India has been exercising controls over the export of goods and technologies, which have direct or indirect application in the development, production, or use of weapons of mass destruction and their means of delivery, as elaborated in Section VIII of the report (S/AC.44/2004/(02)/62), submitted earlier. The WMD Act updates the present system of export controls by introducing the following:

- Stringent control over sensitive and dual-use technologies to ensure that there is no leakage of indigenously developed know-how; the Act introduces controls over the transfer of such technologies by regulating their flow from India or by Indians abroad as well as by regulating their flow to foreign persons within India. (Sections 13(2) and 13(4))
- The Act prohibits the export of any material, equipment or technology from India if the exporter knows that such an item or technology is intended to be used in design and manufacture of a biological weapon, chemical weapon, nuclear weapon or other nuclear explosive device or in their missile delivery systems (Section 11).
- The Act imposes a general prohibition on brokering, by Indians or foreign nationals in India, in any such transaction that is prohibited or regulated under the Act (Section 12).

- The Act also introduces controls over WMD-usable items or technologies brought in transit into India or being trans-shipped through India. In case of transit and trans-shipment controls, the provisions of this Act extend to India's Exclusive Economic Zone and its airspace and any ship, aircraft or other means of transport registered in India or outside India (Section 13 and Section 3). A conveyance is in 'innocent passage' only if it is not engaged in activities related to weapons of mass destruction or their delivery systems.

5. The Act provides for civil as well as criminal penalties in a graded manner:

- In case of violation of provisions related to a nuclear weapon, chemical weapon, a biological weapon, or their means of delivery, as well as in the case of provisions involving terrorists, including with an intent to aid terrorist acts, the Act provides for a minimum punishment of five years extendable to life imprisonment. (Sections 14, 15(1)).
- Criminal liability is also provided for anyone who attempts to contravene or abet the contravention of any provisions of the Act with an intent to aid terrorists with a punishment of a minimum imprisonment of five years extendable up to ten years (section 15(2)).
- Civil and criminal liability has been provided for in case of export control violations, with a minimum punishment of six months extendable to five years. For repeat offences, the minimum punishment will be one year extendable to seven years (Section 17).
- In case of violation of controls relating to transfer of regulated technology to foreign nationals within India, provisions have been made for civil penalties, with criminal liability for repeat offences (Section 16).
- Fiscal penalties have also been provided for making false declarations, or forging documents (Section 18).

Text of this Act can be accessed at http://meaindia.nic.in/disarmament/07da01.pdf. This Act along with other related acts/regulations as listed in the report **(S/AC.44/2004/(02)/62)**, of October 2004, adequately meets the requirements of the UNSC Resolution 1540.

Update of National Export Control Lists and Licensing Guidelines

6. India has specified a list of Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET), the export of which is either prohibited or permitted only under license and the conditions attached thereto (paragraph 28 of the report **(S/AC.44/2004/(02)/62)**, submitted in October 2004). The grant of license for

material, equipment or technology included in the SCOMET list is subject to submission of requisite documents, including end-use cum end-user certification. This list is periodically reviewed and updated.

7. In continuation of this step-by-step approach to the evolution of the GOI system of export controls, Government of India has updated its national export control lists and guidelines with a view to make these more contemporary and in harmony with the objectives of global nuclear and missile non-proliferation which India shares. The revised lists and Licensing Guidelines were notified on July 15, 2005.

8. The Licensing Guidelines provide that in evaluating applications for export of items on the SCOMET List factors including credentials of the end-user, credibility of declarations of end-use of the item or technology, the integrity of the chain of transmission of the item from the supplier to the end-user, the potential of the item or technology to contribute to end-uses that are not in conformity with India's national security or foreign policy goals and objectives, the objectives of global non-proliferation, or its obligations under treaties to which it is a State party would be taken into account. The risk that the exported items will fall into the hands of terrorists, terrorist groups, and non-State actors is also factored into evaluating such applications.

9. These Guidelines also provide that Government of India may also require additional formal assurances, as appropriate, including on end-use and non-retransfer, from the State of the recipient. Furthermore, additional end-use conditions may be stipulated in licences for the export of items or technology that bear the possibility of diversion to or use in the development or manufacture of, or use as, systems capable of delivery of weapons of mass destruction.

10. Applications for the transfer of "Technology" for any item on the List are considered as an application for the export of the item itself. The list and the guidelines are available at the website of the Directorate General of Foreign Trade, Government of India (http://dgft.delhi.nic.in).

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